

U.S. Department of Justice

*United States Attorney
Eastern District of New York*

TM:JD
F.#: 2011R02065

*271 Cadman Plaza East
Brooklyn, New York 11201*

March 15, 2012

By ECF

The Honorable Frederic Block
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Thomas Farese, et. al
Criminal Docket No. 12-094 (FB)

Dear Judge Block:

The government writes to set forth its position, and the relevant case law, regarding the defendants' demand for a speedy trial. This demand was communicated to the Court by defense counsel at the March 8, 2012 status conference.

As the Court is aware, the above referenced indictment was filed and made public on February 2, 2012. On February 10, 2012, defendant Truglia was arraigned on the indictment (See Dkt. Entry # 16). Defendant Farese was not present in this District, having been detained in the Southern District of Florida on these charges. Magistrate Judge Marilyn Go had previously adjourned Farese's arraignment on the indictment, at the request of Farese's counsel, until such time as Farese appeared in New York. (See Dkt. Entry # 15).

Following Truglia's arraignment on the indictment, an Order of Excludable Delay was entered by Magistrate Judge Robert M. Levy, excluding time from February 10, 2012 until March 8, 2012. On March 8, 2012, the parties appeared before Your Honor. Defendant Truglia's appearance had previously been excused; defendant Farese had yet to be transported to this District. At that time, the Court accepted defense counsel's plea of not guilty on behalf of Farese, notwithstanding Farese's absence from the proceedings.

The Speedy Trial Act requires that a criminal defendant be tried within 70 days of the date of the filing or making public of the indictment, or of the date the defendant first

appears before a judicial officer of the court in which the charge is pending, whichever occurs later.¹ 18 U.S.C. § 3161(c)(1); See United States v. Adams, 448 F.3d 492, 503 (2d Cir. 2006). When a case involves multiple defendants, the 70 days are counted from the date of the final defendant's appearance. See United States v. Pena, 793 F.2d 486, 489 (2d Cir. 1986).

Accordingly, Farese has not yet "appeared" in this District, and no time has elapsed under the Speedy Trial Act to date. For these reasons, and due to the trial schedule of government counsel, the government respectfully requests that a trial date be set no earlier than May 21, 2012, which is within the 70 day period from the date of Farese's appearance in the district.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/
Jack Dennehy
Assistant U.S. Attorney
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cc: Defense counsel (by ECF)

1 The requirement that a defendant first appear in the district where the charge is pending makes practical sense - a defendant cannot be tried in absentia absent a finding of his voluntary absconding from the jurisdiction of the court.